IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Bail Appl..No. 4511 of 2007()

CRIME NO.491/07 OF MANNARKKAD POLICE STATION

PETITIONERS/ACCUSED NOS.1 TO 5

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1. MANOJ,S/O.KOCHUKUTTAN,AGED 20 YEARS,
   PUTHENVEETTIL, THIRUVIZHAMKUNNU P.O.,
   AMBALAPPARA, KOTTOPPADAM,
   MANNARKKAD,PALAKKAD DISTRICT.

2. KARTHIAYANI,W/O.KOCHUKUTTAN,
   AGED 41 YEARS,PUTHENVEETTIL,
   THIRUVIZHAMKUNNU P.O.,AMBALAPPARA, KOTTOPPADAM,
   MANNARKKAD, PALAKKAD DISTRICT.

3. SALIM,S/O.ABU, AGED 29 YEARS,
   CHELAKKODAN HOUSE,THIRUVIZHAMKUNNU P.O.,
   AMBALAPPARA, KOTTOPPADAM,
   MANNARKKAD, PALAKKAD DISTRICT.

4. GAFOOR.S/O.HAMSA,AGED 20 YEARS,
   CHELAKKODAN HOUSE,THIRUVIZHAMKUNNU P.O.,
   AMBALAPPARA, KOTTOPPADAM,
   MANNARKKAD, PALAKKAD DISTRICT.

5. SHIHAB,S/O.MUHAMMED, AGED 19 YEARS,
   PARLI VEEDU, THIRUVIZHAMKUNNU P.O.,
   AMBALAPPARA, KOTTOPPADAM,MANNARKKAD,
   PALAKKAD DISTRICT.

BY ADV. SRI.V.A.AJAI KUMAR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
MANNARKKAD.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4511 OF 2007

Dated this the 30th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 5. They, along with 20 others, face allegations in a crime registered, inter alia, under Secs.308 and 452 of the IPC. The de facto complainant allegedly runs a kuri. Claiming that amounts were due from the de facto complainant to the accused persons, they allegedly trespassed into the house of the de facto complainant and indulged in wanton acts of violence. They were armed with bamboo sticks. They aimed at the head of the victim; but fortunately the head was missed and the weapons fell on other parts of the body. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. Amounts were due from the

de facto complainant and those poor persons to whom the amounts due, had only gone to the house of the de facto complainant claiming return of the money. They were allegedly attacked. Stones were thrown at them. Dangerous weapons were used against them. A crime has been registered against the de facto complainant and other occupants of the house. Just to save the skin of the de facto complainant, exaggerated grievous allegations have been raised against the petitioners. The police have obliged the de facto complainant, who is influential, by including the allegation under Sec.308 of the IPC. Injuries suffered are very simple. By no stretch of imagination can the nature of the weapons used as alleged or the nature of the incident as alleged justify the inclusion of the allegation under Sec.308 of the IPC. Because of the inclusion of the offence under Sec.308 of the IPC, the petitioners are unable to surrender before the learned Magistrate and seek regular bail. In these circumstances, anticipatory bail may be granted to the petitioner, it is prayed.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor has explained the facts to this Court. To a specific query as to why Sec.308 of the IPC has been included, the learned Public Prosecutor fairly concedes that the

injuries suffered are minor and simple.

4. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that, at the moment and with the available inputs, I find merit in the contention of the learned counsel for the petitioners that inclusion of Sec.308 of the IPC deserves a more detailed explanation of the police. I am satisfied that appropriate directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioners.

5. In the result, this petition is allowed in part. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 6/8/07 and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case. The learned Magistrate shall straightaway, on the date of their surrender itself, proceed to pass appropriate orders regarding bail to the petitioners. It is made clear that, while considering the applications for bail, the learned Magistrate shall ignore the allegations raised under Sec.308 of the IPC and pass appropriate orders.

(ii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall

thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

(iii) If the petitioners were arrested prior to their surrender on 6/8/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 6/8/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge